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Case No. 90-497

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IN THE

United States Supreme Court

OCTOBER TERM, 1990

JAMES WILLIAMS,*Petitioner,*

v.

JAMES A. CHRANS, Warden of Pontiac
Correctional Center, and NEIL F.
HARTIGAN, Attorney General of the
State of Illinois,*Respondents.*

**REPLY BRIEF IN SUPPORT
OF PETITION FOR WRIT
OF CERTIORARI**

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INTRODUCTION

In his opening brief, petitioner Williams showed that he was precluded from presenting an entire defense to the jury although, as this Court recognized in Chambers v. Mississippi, 410 U.S. 284, 302 (1973), the right to present a defense is a fundamental constitutional right. Williams further showed that he was precluded from cross-examining and impeaching the State's witnesses in violation of Davis v. Alaska, 415 U.S. 308 (1974). In response, the State ignores Williams' claim that his conviction was obtained in derogation of these fundamental rights and instead suggests that his claim addresses "mere evidentiary rulings," which are insufficient grounds for granting habeas relief. (See State's Br. at 8-9.)

The "mere evidentiary rulings" at issue in fact precluded Williams from adducing an entire category of evidence necessary to establish that he was framed

by the police for murder, one of his two principal defenses (the second being an alibi defense perfectly consistent with the frame-up defense). These rulings also precluded Williams from impeaching the police officers by demonstrating that they had engaged during their investigation in misconduct calculated to create evidence against him.

ARGUMENT

The State attempts to justify the trial court's rulings by suggesting that the evidence of police misconduct Williams sought to introduce was "unspecified" (State's Br. at 9) and that the credibility of the defense witnesses was resolved "in the State's favor" at the pretrial hearings (State's Br. at 7). Both of these propositions are incorrect.

First, the evidence that Williams sought to introduce is detailed at pages 17-21 of his petition for certiorari.

Williams was precluded from examining the police officers on the subject of their investigation to demonstrate how they focussed on Williams without provocation and then took steps to create a case against him. His apartment was searched without a warrant, he was arrested without a warrant on the basis of a hearsay statement, potential witnesses (Russell, Ginns, and Beasley) were jailed and abused until they agreed to identify Williams, and Rose Tucker, the mother of the man who came to be the State's primary identification witness at trial, was similarly called to police headquarters for an "interview." Williams also attempted to call Russell, Ginns, and Beasley to detail the ordeal they suffered as the police attempted to obtain identification testimony from them.

Without this evidence, Williams could not establish that the police wanted Williams badly enough to entice the

victim's brother into fabricating a story that would give Williams a motive and, more importantly, could not explain the significance of Andrew Tucker volunteering to identify Williams only after his mother was taken to headquarters by the same officers who held Russell, Ginns, and Beasley in custody.

Second, contrary to the State's assertions at pages 7 and 8 of its brief, the trial court never found these witnesses unworthy of belief and did not deny the pretrial motions to suppress and dismiss because of insufficient evidence. (See also State's Br. at 16.) Rather, the State withdrew Russell, Ginns, and Beasley from its witness list at the end of the hearing. The trial court then held that there was no need to rule on the motion to suppress those witnesses. As for Williams' motion to dismiss the charges because the police officers' coercive tactics had tainted the

witnesses, the court simply ruled that the jury should hear the same evidence and evaluate all of the witnesses itself (Tr. 406-07) -- a ruling it reversed without warning at trial when Williams attempted to present this very evidence to the jury. (Tr. 703.)

When the trial court decided to exclude all evidence of the police misconduct during the investigation, it eviscerated William's frame-up defense. Without that evidence of misconduct, the jury had no reason to discredit the testimony of Detectives Rave and Cozzi, who engaged in the misconduct and testified against Williams. Without that same evidence of police misconduct, the jury had no understanding of how the police had coerced identifications of Williams and therefore no basis to conclude that they had coerced Tucker into testifying by mistreating his mother, Rose Tucker, when

she was at the police station as were Russell, Ginns, and Beasley. And without that evidence of police misconduct, the jury had no way of concluding that the police had caused Glover to fabricate testimony to implicate Williams by leading Glover to believe that Williams had killed his brother.

The State argues, without any support, that the testimony of Glover and Tucker could only be discredited by their own lips -- that is, by an admission on cross-examination that they had been coerced. (See State's Br. at 9-11, 15.) This argument is both factually and constitutionally untenable. A witness that the police had coerced into first making an identification and then testifying to that identification on direct examination cannot generally be expected to turn around and admit to being coerced on cross-examination -- in front of the very people

responsible for the coercion. Moreover, the State completely ignores the fact that the excluded evidence of police misconduct also would have impeached the testifying police officers. Williams attempted to confront these police officers with their own misconduct, but the trial court flatly precluded that impeachment.

The State attempts to shift this Court's attention from the relevance to Williams' frame-up defense of the proffered testimony of Rave, Cozzi, Russell, Ginns, Beasley, and Grady by suggesting that the police misconduct did not yield any evidence subject to the exclusionary rule such as a coerced confession or improperly-seized physical evidence, the remedy for which would be suppression. (State's Br. at 14-18.) Evidence of improper searches, arrest, and interrogation, however, was part and parcel of Williams' frame-up defense and was necessary to demonstrate

that the police focussed on Williams immediately for no apparent reason and then took extreme steps to fabricate a case against him.

Nothing in this Court's decisions in Chambers v. Mississippi, Davis v. Alaska, or their progeny, permit the State to infringe upon a criminal defendant's Sixth Amendment right to defend himself by excluding evidence of a frame-up defense. Nothing in those decisions permits the State to dictate the way in which a defense should be presented. Williams had a constitutional right to present this evidence to the jury and the trial court's rulings prevented him from doing that. Consequently, his conviction is constitutionally unfair and he should be granted a writ of habeas corpus.

CONCLUSION

For the reasons set forth above and in his Petition, James Williams respectfully requests this Court to grant his petition for a writ of certiorari.

Respectfully submitted,

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Dated: February 12, 1991